

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
4 State Bar No. 245282
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013 - 566

13 **GAYLE E. STEIN**
100 E. Pine Street, C
Alhambra, CA 91801

A C C U S A T I O N

14 **Registered Nurse License No. 265776**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs ("Board").

21 2. On or about May 31, 1976, the Board issued Registered Nurse License No. 265776 to
22 Gayle E. Stein ("Respondent"). The Registered Nurse License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.

27 **STATUTORY PROVISIONS**

28 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or

1 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
2 action during the period within which the license may be renewed, restored, reissued or
3 reinstated.

4 5. Section 490 states, in pertinent part:

5 "(a) In addition to any other action that a board is permitted to take against a licensee, a
6 board may suspend or revoke a license on the ground that the licensee has been convicted of a
7 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
8 or profession for which the license was issued.

9 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
10 discipline a licensee for conviction of a crime that is independent of the authority granted under
11 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the licensee's license was issued.

13 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
14 conviction following a plea of nolo contendere. Any action that a board is permitted to take
15 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
16 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
17 made suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4 of the Penal Code. . . ."

19 6. Section 2242, subdivision (a) states, "Prescribing, dispensing, or furnishing
20 dangerous drugs as defined in Section 4022 without an appropriate prior examination and a
21 medical indication, constitutes unprofessional conduct."

22 7. Section 2264 states: "The employing, directly or indirectly, the aiding, or the abetting
23 of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the
24 practice of medicine or any other mode of treating the sick or afflicted which requires a license to
25 practice constitutes unprofessional conduct."

26 8. Section 2726 states, "Except as otherwise provided herein, this chapter confers no
27 authority to practice medicine or surgery."

28 9. Section 2750 provides that the Board may discipline any licensee, including a

licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

"(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5. . . ."

11. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or

1 administer to another, any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
3 defined in Section 4022."

4 12. Section 2764 provides that the expiration of a license shall not deprive the Board of
5 jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision
6 imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an
7 expired license at any time within eight (8) years after the expiration.

8 13. Section 2765 states:

9 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
10 charge substantially related to the qualifications, functions and duties of a registered nurse is
11 deemed to be a conviction within the meaning of this article. The board may order the license or
12 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
13 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
14 order granting probation is made suspending the imposition of sentence, irrespective of a
15 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
16 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
17 of guilty, or dismissing the accusation, information or indictment."

18 **REGULATORY PROVISION**

19 14. California Code of Regulations, title 16, section 1444 states:

20 "A conviction or act shall be considered to be substantially related to the qualifications,
21 functions or duties of a registered nurse if to a substantial degree it evidences the present or
22 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
23 safety, or welfare. . . ."

24 **COST RECOVERY**

25 15. Section 125.3 provides that the Board may request the administrative law judge to
26 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
27 sum not to exceed the reasonable costs of the investigation and enforcement of the case, with
28 failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a

1 case settles, recovery of investigation and enforcement costs may be included in a stipulated
2 settlement.

3 **DANGEROUS DRUG**

4 16. Botox, Botulinum Toxin Type A, is a dangerous drug pursuant to section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Substantially Related Crime)**

7 17. Respondent is subject to disciplinary action under Code sections 490 and 2761,
8 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that
9 on or about January 23, 2012, Respondent was convicted of a crime substantially related to the
10 qualifications, functions or duties of a registered nurse which to a substantial degree evidences
11 her present or potential unfitness to practice in a manner consistent with the public health, safety,
12 or welfare, as follows:

13 a. On or about January 23, 2012, after pleading nolo contendere, Respondent was
14 convicted of one lesser misdemeanor count of violating Business and Professions Code section
15 2052(a) [practicing medicine without certification] in the criminal proceeding entitled *The People*
16 *of the State of California v. Gayle Stein* (Super. Ct. Los Angeles County, 2011, No. BA384494).
17 The Court placed Respondent on three (3) years probation, ordered her to complete 60 days
18 community service, and ordered her to pay \$8,956.00 restitution to the Medical Board of
19 California.

20 b. The circumstances underlying the conviction are that on or about March 30, 2011,
21 during a Medical Board of California undercover operation at Z Med Spa ("ZMS"), Respondent
22 examined the undercover "patient" ("UC") without a licensed medical doctor's consultation or
23 order. Respondent discussed and advised treatment including Botox injections and micro-
24 dermabrasion. Respondent was arrested just as she was ready to administer a Botox injection to
25 the UC. ZMS's owner, an esthetician, has employed Respondent since 1995. ZMS pays
26 Respondent a bi-monthly salary of \$2,600.00 to perform services of:

27 Thermage (eyes, face)
28 Botox, Juvederm, Radiesse
Laser Genesis (skin retexturing)

IPL (photo facial, red/brown spots)
Red and Blue Led Light
Diamond Tipped Microderms
Cellulite Reduction
Detox Treatments/Wraps
Couples Massage
Laser Hair Removal/Spider Veins
Medical Grade Chemical Peels
B6/B12 & B Complex/Vit C Shots
Teeth Whitening
Ear Candling

SECOND CAUSE FOR DISCIPLINE

(Conviction of Practicing Medicine without a License)

18. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(2), on the grounds of unprofessional conduct, in that on or about January 23, 2012, Respondent sustained a criminal conviction for practicing medicine without a license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 17, subparagraphs (a) and (b), inclusive, as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Obtain or Possess a Dangerous Drug)

19. Respondent is subject to disciplinary action under Code sections 2761, subdivision (a), and 2762, subdivisions (a) and/or (b), on the grounds of unprofessional conduct, in that on or about March 30, 2011, Respondent obtained or possessed Botox, a dangerous drug, without a valid prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 17, subparagraphs (a) and (b), inclusive, as though fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Aiding and Abetting a Violation of Medical Practice Act)

20. Respondent is subject to disciplinary action under Code section 2761, subdivision (i), in conjunction with Code sections 2242 and 2264, on the grounds of unprofessional conduct, in that on or about March 30, 2011, Respondent aided or assisted, or agreed to aid or assist the owner of ZMS, an unlicensed physician, in the performance of activities that that required a medical license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 17, subparagraph (b), inclusive, as though fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Violate Nursing Practice Act)

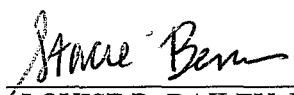
21. Respondent is subject to disciplinary action under Code section 2761, subdivisions (a) and/or (d), in that Respondent committed acts of unprofessional conduct, and/or acts violating the Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 17-20, inclusive, as though fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 265776, issued to Gayle E. Stein;
2. Ordering Gayle E. Stein to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: JANUARY 18, 2013


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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